Sendirian Berhad and guaranteed by the debtor and his son. By a Letter of Guarantee executed on March 26, 1974, the debtor jointly with his son agreed to guarantee the company to the extent of $100,000. Upon demand by the judgment creditor's solicitors the debtor failed to pay the outstanding debt owed by the company. Hence, an Order 14 judgment was obtained by the judgment creditor against the debtor.

In *In re: Flatau ex parte Scotch Whisky Distillers,*[4] the Court of Appeal held that when in a bankruptcy petition the act of bankruptcy relied on is the failure to comply with the bankruptcy notice to pay a judgment debt, the mere fact that an appeal is pending over the judgment is not a sufficient ground for staying the proceedings upon the petition. The Court of Bankruptcy will not, as a matter of course, enquire into the validity of a judgment debt, but only when there is evidence that a judgment had been obtained by fraud or collusion, or that there has been some miscarriage of justice. In the words of Fry L.J., at p. 86:

"Sub-section 4 throws on the person who applies for a stay the burden of showing a reason for it; the sub-section does not say that there shall be a stay unless the Court shall be of opinion to the contrary, but that there shall be a stay 'if the Court thinks fit.' It lies on the applicant to show a reason for the stay, and no sufficient reason has been shown in the present case."

In *re: Saville*[5] the Master of the Rolls said:

"It seems to me that the case of *ex parte Lennox* 16 Q.B.D. 315 shows that a mere fact of a judgment having been recovered does not prevent the Court of Bankruptcy, if sufficient reasons are given for doing so, from going behind the judgment. But it does not decide that, there being a judgment, on the mere suggestion of the debtor that the judgment is bad, the Court of Bankruptcy is bound to go behind the judgment and inquire into the validity of the debt."

In the present case, following the above authorities I am satisfied that no sufficient reason has been shown by the debtor to enable me to exercise my discretion in favour of a stay. This application is, therefore, dismissed and a Receiving and Adjudication Order is made against the debtor.

Application dismissed.

Solicitors: *Subash Chandran, Lim Huck Aik & Co.*

SEOW MUI KIM v. PERWIRA HABIB BANK & ORS.

[O.C.J. (Gunn Chit Tuan J.) September 19, 1985]

[Kuala Lumpur – Civil Suit No. C 3485 of 1985]

Contract – Deposit of shares by way of securities to Bank – Default of payment by third parties as borrowers – Registration of shares in name of Bank's nominees – Whether lawful.

The plaintiff was granted an *ex parte* order on July 1, 1985, for various injunctions, including a mandatory injunction against the defendants involving 1,263,500 shares in Kamunting Tin Dredging (M) Bhd. owned by her and her representees. These shares were deposited by them with blank transfer forms duly executed with the first defendant by way of security in respect of loans granted to third parties who defaulted in payment. As a result, the first defendant proceeded to register the shares in favour of its nominee, Perwira Habib Nominees Sdn. Bhd. The first defendant and the fifth defendant now apply to set aside the *ex parte* order restraining the defendant from dealing with the shares adverse to their interest. The main issue for decision was whether the taking away of the plaintiff's shares was lawful.

Held: (1) the first defendant bank was in the circumstances of this case legally entitled to register the shares of the plaintiff and her representees into the name of its nominee company;

(2) even if there were triable issues in this case, the plaintiff was not on the balance of convenience in the light of the evidence available to court on July 5, 1985, entitled to the various injunctions, including the mandatory injunction ordering the first defendant to execute fresh proxy forms in respect of the said 1,263,500 shares which were originally in her name and those whom she represented;

(3) the order granted to the plaintiff on July 1, 1985, must therefore be set aside;

(4) applications for stay of execution and fresh injunction were refused.

Cases referred to:–

(1) *Re J. L. Young Manufacturing Co. Ltd.* [1900] 2 Ch. 753.
(2) *In re Tahiti Cotton Company* (1874) L.R. 17 Eq. 273.
(3) *Stubbs* v. *Slater* [1910] 1 Ch. 632.
(4) *Official Assignee, Bombay* v. *Madholal Sindhu* A.I.R. 1947 Bombay 217.
(5) *Boyce* v. *Gill* (1891) 64 L.T. 824.
(6) *Arjun Prasad* v. *Central Bank of India* A.I.R. 1956 Pat. 32, 37.
(7) *Deverges* v. *Sandeman, Clark & Co.* [1902] 1 Ch. 579.
(8) *Harrold* v. *Plenty* [1901] 2 Ch. 314, 316.
(9) *Erinford Properties Ltd.* v. *Cheshire County Council* [1974] 2 All E.R. 448.

APPLICATIONS.

Sri Ram for plaintiff/respondent.

Matthias Chang Wen Chieh for 1st defendant/applicant.

T. Thomas (*Tuan Hj. Sulaiman* with him) for 5th defendant/applicant.

Cur. Adv. Vult.

Gunn Chit Tuan J.: There were two applications dated July 2, 1985, and July 3, 1985, (enclosures 8 and 11) to set aside the following *ex parte* order obtained from me on July 1, 1985, by one Seow Mui Kim (the plaintiff) on behalf of herself and the other beneficial and registered owners of 1,263,500 shares in Kamunting Tin Dredging (M) Berhad (KTD) in respect of which blank transfer forms have been executed by the beneficial and registered owners thereof and delivered to Perwira Habib Bank Malaysia Berhad (the first defendant):

"1. The 2nd Defendant by its agents or servants be restrained and an Injunction is hereby granted restraining them until July 31, 1985 from acting upon or registering any transfer of the 1,263,500 shares in Kamunting Tin Dredging (M) Berhad (KTD) or any portion thereof of which the Plaintiff, SEOW MUI KIM and her representees are the registered or beneficial owners which are presented to it by or on behalf of the 1st Defendant;

2. An injunction that until July 31, 1985, the 3rd and 4th Defendants be restrained from assisting or taking any steps in the procurement of the registration of any transfer in respect of the 1,263,500 shares in KTD or any portion thereof of which the Plaintiff, SEOW MUI KIM and her representees are the registered or beneficial owners which are presented to it by or on behalf of the 1st Defendant;

3. An injunction that the 5th Defendant be restrained from acting as the Chairman of KTD;

4. An injunction that the 1st Defendant be restrained from executing and delivering proxies, powers of attorney or authorised representation in respect of the said 1,263,500 shares in KTD in favour of any person other than the plaintiff;

5. A mandatory injunction, in the event that the registration of the transfer of the said 1,263,500 shares or any portion thereof in the name of the 1st Defendant or its nominees has already been effected and proxies in respect thereof have already been executed, that the 1st Defendant do forthwith upon service of this Order revoke the said proxies already executed, execute fresh proxy forms in respect of the said 1,263,500 shares in the name of the Plaintiff or their nominees and lodge the said proxies at Suite 1, 23rd Floor, Tun Abdul Razak Complex, Jalan Ah Fook, Johor Bahru on or before 11.00 a.m. July 3, 1985 or to deliver the same by hand to the authorised representative of the Plaintiff so appointed for this purpose;

6. That the Plaintiff do within ten (10) days from the date of this Order serve upon all the defendants abovenamed or their solicitors all cause papers (other than the Statement of Claim) including this Order;

7. That this Summons and all the prayers therein be adjourned to a date to be fixed for hearing *inter parte*; and

8. That the cost of this application be costs in the cause."

The first application to set aside the said *ex parte* order was by the 1st defendant and the other application was by one Baharuddin bin Maarof (the 5th defendant).

Submission of counsel for the first defendant/applicant:

Mr. Matthias Chang Wen Chieh, counsel for the 1st defendant, informed the court that certain third parties, who were not involved in these proceedings, were indebted to the 1st defendant for about $33 million. The loan was secured by some shares of KTD which were originally registered in the name of the plaintiff and the other owners represented by her. As the 1st defendant has recalled the loan facilities from the third parties, who had defaulted and failed to discharge the loan granted to them, the 1st defendant had therefore enforced its security by transferring the shares of the plaintiff and the other owners into the name of its nominees, namely, the Perwira Habib Nominees Sdn. Bhd.

Counsel then drew the attention of the court to paragraphs 2, 5(a) and 7 of the affidavit of the plaintiff dated July 1, 1985, (enclosure 2) filed in support of her *ex parte* summons-in-chambers whereby she had obtained the above-quoted order of July 1, 1985. In paragraph 2 of the said affidavit the plaintiff stated that she had "been reliably informed that the 1st defendant has sent to the 2nd, 3rd, 4th and 5th defendants the KTD shares for registration without her consent and the consent of all the other said beneficial and registered shareholders." In paragraph 5(a) she has stated that the "aforesaid shares of herself and her representees amounting to 1,263,500/- together with undated transfer forms executed in favour of the 1st defendant had been in the hands of the 1st defendant since early 1984 as security for a term loan and the first defendant's attempt at this point of time to transfer the shares into the name of its nominees at the "eleventh hour" before the EGM is not coincidental but she was told was the result of a conspiracy. She has been reliably given to understand that the transfers were so timed by the defendants to be completed before a forthcoming EGM so as to deprive her and her representees of voting strength at the EGM on 5th July, 1984, and to frustrate the purpose of the meeting." Again in paragraph 7 the plaintiff has stated that she had "been reliably informed that the defendants have now conspired against her and the other registered

shareholders as aforesaid by having the shares registered contrary to the guidelines of the Foreign Investment Committee ...". Counsel submitted that sources of information must be referred to an affidavit and relied on *Re J. L. Young Manufacturing Company Limited*[1] in which case it was held that an affidavit of information and belief, not stating the source of the information or belief, is irregular, and therefore inadmissible as evidence, whether on an interlocutory or a final application; and a party or solicitor attempting to use such an affidavit will do so at his peril as to costs. Counsel then requested the court to expunge the whole of the plaintiff's affidavit or paragraphs 2, 5(a) and 7 thereof as the sources of information have not been disclosed. Mr. Chang also pointed out that all the material facts were not disclosed in the plaintiff's affidavit, especially the relationship between the plaintiff and the 1st defendant. He then referred to the affidavit of one Alec Tan Cheong Tiong dated July 3, 1985, (enclosure 7) filed in support of the 1st defendant's application to set aside the above order, and stated that the plaintiff did not disclose to the court that the 1st defendant bank had given the third parties time to pay up the loan, and also time to obtain suitable purchasers for the said shares so as to enable them to offset the proceeds thereof towards liquidating the outstanding loan. The third parties as borrowers were given until June 11, 1985, to do so but had failed to obtain suitable purchasers. The 1st defendant in the circumstances had no choice but to realise its security and had already transferred the said shares to its nominees Perwira Habib Nominees Sendirian Berhad. Counsel also stated that the 1st. defendant was already the registered owner of the shares in question after exercising the following power granted to the bank in the various letters of lien shown in Schedule 'A' of the affidavit of the said Alec Tan Cheong Tiong which were executed by the third parties as borrowers:

"I/We the undersigned hereby constitute and appoint you as my/our attorney on your behalf to fill up and complete any incomplete transfer attached to any of such shares and/or stocks and to insert your name or that of any other nominee of your bank therein as transferee of the shares and/or stocks enumerated therein and to sign or as the case may be sign, seal execute and deliver any such transfer or other documents that may be necessary or required for the purpose of completing your title to any such shares and/or stocks and/or securities and register the same in the books of the concern to which the same relate and obtain fresh script or scripts for the shares, stocks and/or securities enumerated herein in the name of your bank or in that of any other employee or nominee of your bank without any reference to or consent of me/us and also to pledge and/or sell and absolutely dispose of all or any such shares, stocks and/or securities at such price and in such manner as you may think fit without any reference to or consent of me/us and I/we hereby agree at your manner as you may think fit without any reference or consent of me/us."

Mr. Chang then pointed out that the order granted by the court on July 1, 1985, did not challenge the validity of the registration of the shares in the name of the 1st defendant's nominees or direct that the shares be transferred back to the plaintiff. He then queried whether the plaintiff could in the circumstances force the bank as to whom proxies should be executed, and stated that the only circumstance in which the plaintiff could so compel the 1st defendant bank was by redeeming the said loan and therefore obtaining the right to have the shares retransferred into her name and the names of those whom she represented. Counsel concluded by pointing out that there was no privity of contract between the plaintiff and the 1st defendant. At that stage Mr. Sri Ram, counsel for the plaintiff, conceded that if the plaintiff's affidavit did not disclose all relevant facts, then the said *ex parte* order could be set aside.

Submission of counsel for the fifth defendant/applicant:

Mr. T. Thomas, counsel for the 5th defendant, also drew the court's attention to certain background facts of the case. He stated that there were two factions in KTD, namely that of a company called Malaysia Mining Corporation Berhad and that of one Dato' K.C. Koh. Both factions have directors on the board of KTD. Counsel then pointed out that the order sought by the plaintiff against the 5th defendant in this suit was similar to that sought against him in another suit, namely, K.L. High Court Civil Suit No. C5479/84. He referred to the endorsement on the writ in this suit and pointed out that there was only one substantive claim against the fifth defendant, and contended that there was no reason for this action against him. He also pointed out that the said Dato' K.C. Koh was already the third party in the other suit.

Mr. Thomas contended that when shares were deposited with a bank as security for a loan, it did not matter to whom the loan was granted, and that the bank had a contractual right to register those shares in the event of a default by the borrower. As regards the consent of each shareholder whose shares have been deposited with the bank as security for the loan, counsel contended that the signatures of the various owners on those transfer forms deposited together with the shares re-

presented the consent of those owners to the transfer of their shares. He also contended that the beneficial ownership of the said shares were already in the 1st defendant bank after it had enforced its security by registering those shares into the name of its nominee company, Perwira Habib Nominees Sendirian Berhad. Alternatively, counsel contended that the owners were the legal shareholders subject to an equitable charge in favour of the bank and that the bank had merely perfected its security by registering the shares into the name of its nominee company. Mr. Thomas next referred to the last paragraph in a letter dated June 29, 1985, from Messrs. K.C. Koh & Company, Advocates & Solicitors for Golden Wealth Group and their associate company, to the Chairman of the 1st defendant bank, which had been exhibited as 'SMK 7' to the affidavit of the plaintiff dated July 1, 1985 (enclosure 2) and pointed out that there was an admission therein relating to the loan by the 1st defendant bank.

In support of his contention, counsel referred to *In re Tahiti Cotton Company*[2] in which case it was held *inter alia* that where the owner of shares borrows money and deposits with the lender certificates of his shares, and also transfers thereof signed by him, but with the date and name of the transferee left blank, the lender has implied power to fill up the blanks, and the transfers will pass the legal interest if the articles of association do not require a deed; otherwise only an equitable interest. For another case of a mortgage of shares by deposit of the share certificate together with a blank transfer, counsel referred to *Stubbs* v. *Slater*[3] in which case Cozen-Hardy M.R. and Buckley L.J. considered that there was an implied power of sale in the case of a mortgage of shares by deposit of the share certificate together with a blank transfer.

Mr. Thomas also referred to the above-quoted *ex parte* order granted on July 1, 1985 and pointed out that the first order therein had been overtaken by events. He stated that the second and fourth orders were also inapplicable because the 1st defendant had executed proxies before July 1, 1985, although he conceded that they were only delivered at 10.00 a.m. that morning. He also stated that the sixth, seventh and eighth orders need not be challenged and that the fifth order was the only substantive one which he contended the court did not have the power to make.

Counsel then referred to the letters of lien attached as exhibits to the affidavit of the said Alec Tan Cheong Tiong (enclosure 7) in which the bank had been given express powers to transfer the shares deposited with it. He also referred to the various letters of guarantee signed by the borrowers and attached to the various letters of lien in which it was expressly stated that the bank may "as you think fit and without reference to me/us grant the Principal time or other indulgence..., realise or in any way deal with any securities or rights now or hereafter held by you in respect of the indebtedness." Counsel also submitted that there was no acquisition of assets in this case within the Guidelines issued by Government for the Regulation of Acquisition of Assets, Mergers and Takeovers, and contended that assuming that there was a breach of the Guidelines it was not illegal because the said Guidelines do not have the force of law.

Mr. Thomas also pointed out that essential documents were not disclosed to the court when the plaintiff applied for the order of July 1, 1985. He then referred to the letter marked exhibit SMK 6 to the plaintiff's affidavit (enclosure 2) and pointed out that it had been superseded when the loan documentation was completed as shown in exhibits AT 1 to 8 to the affidavit sworn by the said Alec Tan Cheong Tiong dated July 3, 1985 (enclosure 7). As regards paragraph 10 of the plaintiff's affidavit (enclosure 2) emphasizing that she was a minority shareholder, counsel pointed out that the plaintiff was no longer a member of KTD after her shares had been registered into the name of the plaintiff's nominee company. He then referred to a letter dated July 1, 1985, to K.C. Koh & Company from the General Manager of the first defendant bank (exhibit PN 1 to enclosure 12) and pointed out that in spite of so many indulgences granted by the first defendant bank, yet no action was taken to pay the said loan. Counsel concluded by summarizing five grounds which he contended would justify the dissolution of the injunctive order granted to the plaintiff.

The reply of counsel for the plaintiff/respondent

Mr. Sri Ram, counsel for the plaintiff, in reply stated that the main issue in this case was whether the taking away of the plaintiff's shares was lawful. He referred to paragraphs 4 and 6 of the affidavit of Alec Tan Cheong Tiong which were concerned with Schedules A & B thereto (enclosure 7) and stated that the plaintiff's name did not appear in them as a borrower and submitted that there was no privity of contract between the plaintiff and the defendants. He contended that the first defendant

should have given notice to the various shareholders before registering the shares into the name of its nominee company, and also referred to sections 125 and 127 of the Contracts Act, 1950 (Revised – 1974) concerning bailment of pledges which I did not think were really relevant to the case.

Counsel also quoted the Indian case of *Official Assignee, Bombay* v. *Madholal Sindhu*[4] in which case it was held, '*inter alia*', that a pledgee could not sell goods pledged without notice to the pledger. Mr. Sri Ram then submitted that there was a serious issue to be tried in this case and that the plaintiff would suffer hardship if the injunctive order including the mandatory injunction, which he contended had been rightly given, was dissolved. Finally, he also contended that in this case there was a forfeiture and not a sale of the shares in question.

Matters considered by the Court before exercise of its discretionary powers.

The position regarding contents of an affidavit is covered by Order 41 rule 5 of the Rules of the High Court, 1980, which provides that:

"5.(1) Subject to Order 14, rules 2(2) and 4(2), to paragraph (2) of this rule and to any order made under Order 38, rule 3, an affidavit may contain only such facts as the deponent is able of his own knowledge to prove.

(2) An affidavit sworn for the purpose of being used in interlocutory proceedings may contain statements of information or belief with the sources and grounds thereof."

In this case the proportion of hearsay evidence, which is irrelevant, to the relevant material is not so high that the whole of the plaintiff's affidavit (enclosure 2) should be removed from the file. Following the opinion of Lord Alverstone C.J. in *Re J.L. Young Manufacturing Company Limited* the evidence on information and the sources of which have not been disclosed in paragraphs 2, 5(a) and 7 of the plaintiff's affidavit need not be looked at at all. In any case I agreed with counsel for both applicants/defendants that material facts and documents were not disclosed to the court in the plaintiff's affidavit (enclosure 2) when she applied for the *ex parte* order of July 1, 1985. When the plaintiff's affidavit (enclosure 2) was considered by me on July 1, 1985, I got the impression that the shares of the plaintiff and her representees, which had been deposited with the first defendant as security for a term loan, had been unreasonably registered into the name of the first defendant's nominee company and that the first defendant company had then executed proxies in favour of others to be used to frustrate the purpose of an Extraordinary General Meeting to be held on July 5, 1985, at the Hilton Hotel, Kuala Lumpur. But after consideration of the affidavits which were filed later on by both the applicants/defendants (enclosures 7 and 9), it was then brought to the court's attention that all material facts have not been disclosed in the plaintiff's affidavit (enclosure 2), especially the circumstances under which the shares of the plaintiff and her representees had been deposited with the first defendant bank by certain third parties to whom the first defendant bank had granted loan facilities. Although the plaintiff's affidavit (enclosure 2) did refer to a letter dated June 14, 1984, regarding the credit facility (exhibit SMK 6 to enclosure 2) stating that the shares in question need not be registered in the name of Perwira Habib Nominees Sendirian Berhad, but the loan documentation in this case as shown in exhibits 1 to 8 to enclosure 7, which had superseded the said letter of June 14, 1984, were not disclosed to the court. It was also not disclosed to the court that the first defendant bank had given the third parties ample time to pay up the loan but the third parties had failed to do so and that the first defendant had realized its security by registering the said shares into the name of its nominee company. The fact that the plaintiff in her affidavit in support of her *ex parte* application of July 1, 1985, had failed to disclose all relevant facts was sufficient reason for the injunctive order of July 1, 1985, to be set aside without regard to the merits. (*Boyce* v. *Gill*[5]).

Be that as it may, there were other reasons why the court considered that its discretion should be exercised in favour of the applicants/defendants on July 5, 1985. When the various third parties as borrowers executed the letters of lien and guarantee as shown in exhibits 1 to 8 to the affidavit of the said Alec Tan Cheong Tiong dated July 3, 1985 (enclosure 7) they also gave the first defendant bank what are commonly called "blank" transfers executed in favour of the bank together with the share certificates deposited with it. Mr. Sri Ram considered that the transaction in this case was a pledge in which case the pawnee must give the pawnor reasonable notice of sale under section 129 of the Contracts Act, 1950 (Revised – 1974) before he might sell the thing pledged. Both counsel for the applicants/defendants, however, submitted that the transaction was a mortgage which by law, in the absence of an express power of sale,

gives an implied right to the mortgagee to sell after giving reasonable notice. As our Contracts Act, 1950, is similar to the Indian Contracts Act the position here would therefore be similar to that in India where shares are goods and therefore pledgeable. As in India there can be a pledge of shares and there can also be a mortgage of shares; whether it is one or the other will depend on the intention of the parties and the circumstances of each case. (See Das J. in *Arjun Prasad* v. *Central Bank of India*[6]). For purposes of a sale of the shares the distinction between a mortgage and a pledge would not be material as in either case reasonable notice would have to be given. The important point, however, to note was that there was no sale of the shares in question whereby notice to the plaintiff and her representees would have been necessary. I agreed with counsel for both applicants/defendants that when the share certificates of the plaintiff and her representees were deposited with the first defendant bank to secure a debt or loan to the various third parties, and which in this case were accompanied by transfers in blank as to the name of the transferees, a mortgage of those shares was created. The intention was that the first defendant bank as mortgagee should be at liberty later on to fill up the blanks and perfect its security by getting itself registered. In this case the first defendant had not only an implied as well as an express power to sell those shares after reasonable notice which it did not exercise (*Stubbs* v. *Slater; Deverges* v. *Sandeman, Clark & Company*[7]), but it also had both an implied as well as an express right to fill up the blanks in the transfer forms and to register those shares into its name or the name of its nominee company in the event of a default by the borrowers which was what had happened in this case. Alternatively the first defendant bank also had a mortgage's usual right to foreclose (*Harrold* v. *Plenty*[8]). Therefore the answer to the question posed by counsel for the plaintiff was that the first defendant bank was in the circumstances of this case legally entitled to register the shares of the plaintiff and those of her representees into the name of its nominee company.

Finally after Pernas Chartered Management Sdn. Bhd., the second defendant in this action, have registered the 1,263,500 shares into the name of Perwira Habib Nominees Sdn. Bhd. on June 28, 1985, (see exhibit AT 18 to enclosure 7) the plaintiff and her representees were then no longer members of KTD. As such they did not have the right under section 148 of the Companies Act, 1965, to attend any general meeting of the company and to speak and vote on any resolution nor were they entitled under section 149 of the said Act to appoint another person or persons as their proxies to attend and vote instead of them at any meeting of KTD. Therefore even if there were triable issues in this case the plaintiff was not, in my judgment, on the balance of convenience in the light of the evidence available to court on July 5, 1985, entitled to the various injunctions including the mandatory injunction ordering the first defendant to execute fresh proxy forms in respect of the said 1,263,500 shares which were originally in her name and those whom she represented. Having considered the above matters I therefore set aside the order granted by me to the plaintiff on July 1, 1985.

Counsel for the plaintiff then applied for a stay of execution until the disposal of a proposed appeal and relied on the authority of *Erinford Properties Ltd.* v. *Cheshire County Council.*[9] I refused that application for stay and counsel immediately applied for a fresh injunction which I also refused to grant.

Order accordingly.

Solicitors: *Sri Ram, Zulkifli & Kumar; Suhaimi Khor Zulkifli & Chang; Skrine & Co.; Zain & Co.*

OVERSEAS UNION BANK LIMITED v. LEE GUAT CHEOW & CO. SDN. BHD.

[O.C.J. (Mohamed Dzaiddin J.) September 2 & October 29, 1985]

[Penang – Originating Summons No. 140 of 1984]

Land Law – Loan secured by property – Foreclosure action – Order of sale – Whether plaintiff guilty of unreasonable or unconscionable conduct – National Land Code 1965, ss. 256(3), 257(1)(c), 265(2) – R.H.C. 1980, O.56 r.2(2) – Moneylenders Ordinance 1951.

In this foreclosure action, the plaintiff applied for order of sale of two properties in Georgetown, Penang ("the said property") to be sold by a public auction under the provisions of the National Land Code 1965. The said property belonged to the defendant, a family company incorporated in Malaysia. On August 5, 1983 the defendant consented to and executed a third party legal charge of the said property in favour of the plaintiff to secure overdraft facilities of $300,000 given to or for the benefit of Myli Enterprise Sdn. Bhd, a company incorporated in Malaysia and having its registered office in Penang. Myli Enterprise Sdn. Bhd. defaulted in paying the overdraft sum. On July